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**FILED**

SEP 10 2014

SECRETARY, BOARD OF  
OIL, GAS & MINING

*Attorneys for the Division of Oil, Gas and Mining*

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**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES**

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**STATE OF UTAH**

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In the Matter of the Notice of Agency Action to affecting the mining operations of **M. TODD WILHITE, WALL & ROCK, INC.**, and/or **WILHITE & ASSOCIATES, INC.**, by (1) withdrawing a Notice of Intention, (2) forfeiting a Certificate of Deposit No. 7089407881 in the amount of \$7000 plus accrued interest held by **ZIONS BANK**, (3) ordering reclamation of mines, and (4) requesting the Division of Oil, Gas and Mining and the Attorney General to take all other actions necessary to recover costs, fees, and fines for the operations occurring at (a) Gulch Mine (S023/0087) in Juab County; (b) Freedom from War Mine (S/039/0024) in Sanpete County; (c) Mount Pleasant Mine (S/039/0027) in Sanpete County; and (d) Mount Pleasant North Mine (S/039/0030) in Sanpete County.

**NOTICE OF AGENCY ACTION**

Docket No. 2014-039

Cause Nos. S/023/0087  
S/039/0024  
S/039/0027  
S/039/0030

This Notice of Agency Action addresses violations of the Mined Land Reclamation Act and its regulations by M. Todd Wilhite (“**Wilhite**”), Rock & Wall, Inc., and/or Wilhite & Associates, Inc. Mr. Wilhite is the principal officer of both corporations. These violations occurred at four separate mining operations—Freedom from War Mine (S/039/0024) in Sanpete County; Mount Pleasant - Wilhite Mine (S/039/0027) in Sanpete County; Mount Pleasant North Mine (S/039/0030) in Sanpete County; and Gulch Mine (S/023/0087) in Juab County. The Division of Oil, Gas and Mining (“**Division**”), asks the Board of Oil, Gas and Mining (“**Board**”) to grant the requested relief in order to bring Wilhite and Corporations into compliance with the Act.

### **Jurisdiction**

1. The Division brings this matter to the Board under the Utah Mined Land Reclamation Act (the “**Act**”), Utah Code §§ 40-8-1 to -23. The Act gives the Board and Division “jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter.” Id. § 40-8-5(1)(a). The Act also gives the Board the power and the duty to hold hearings and issue orders based on those hearings and “[t]o do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.” Id. § 40-8-6(2), (4).

2. Pursuant to the Rules of the Board, unless otherwise ordered, this matter will be heard at the regularly scheduled a Board Hearing on October 22, 2014 in the auditorium of the Department of Natural Resources building at 1594 West North Temple, Salt Lake City, Utah. The hearing is scheduled to begin at 9:00 A.M. to hear pending requests and notices of agency action.

3. This proceeding is to be conducted formally according to the provisions of the Board's administrative rules found in Utah Administrative Code Rule R641 and sections 63G-4-204 through 63G-4-209 of the Utah Code.

4. This proceeding may affect property interests of the permitted operators, the mineral owners, the surface landowners, the surety, and other named individuals. Each are "respondents" as defined under Utah Administrative Code Rule R641-100-200. The respondents must "file and serve a written response signed by the respondent or his/her representative with[in] twenty (20) days of the mailing date" of this Notice of Agency Action. Utah Admin. Code R. R641-104-141 (2012). Under administrative rules R641-104-131.600 and R641-104-151, a party who fails to file a response or attend or participate in the hearing may be held in default.

#### **General Allegations**

5. Wilhite & Associates, Inc., is a corporation formed and registered in Utah in August 2005. Its registered agent is Michael Todd Wilhite at 465 North University Avenue, Provo, Utah, 84601. Mr. Wilhite is the president and principal officer of the corporation.

6. Wall & Rock, Inc., is a corporation formed and registered in Utah in November 2007. Its registered address is 3651 North 100 East, Suite 300 Provo, Utah, 84604. The corporation's Registered Agent is Richard Jaynes at 422 East 710 North, Lindon, Utah, 84042.

7. M. Todd Wilhite is the Wall & Rock's registered President and Director. He is also the President of Wilhite and Associates. Wilhite's address is both P.O. Box 826, Pleasant Grove, Utah 84062 and 3651 North 100 East Suite 300, Provo, Utah, 84604.

8. The history of the individual mining operations and violations are set forth separately in the following specific allegations.

## **Specific Allegations**

### **A. The Gulch Mine (S/023/0087)**

9. The Gulch Mine lies in Juab County and has about two acres of disturbed area. The mine location lies in the South  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of Section 36, Township 10 South, Range 3 West, Salt Lake Meridian, Utah. According to a submitted NOI, and an amendment to that NOI, Mr. Wilhite and Wilhite & Associates own the surface and mineral estate.

10. Todd Wilhite and Wilhite & Associates, Inc., filed an NOI with the Division in August 2005. A year later, Wilhite & Associates provided a surety in the form of a \$10,400 CD at Zions Bank “to guarantee the availability of reclamation funds.” In December of 2006, the Division approved the surety and the NOI.

11. Three years later, in December 2009, the Division advised the operators that the surety amount must be increased by at least \$1300 due to the regular review process and escalation schedule. Six months later, the Division advised the operator that he could reduce the amount of surety by reclaiming a portion of the mine site.

12. After almost a year of failing to increase the surety, the Division issued Cessation Order (MC2010-42-10) on October 7, 2010 to Mr. Wilhite and Wilhite and Associates for failing to maintain an adequate reclamation surety. The Division later modified the order to allow the operator an opportunity to obtain a sufficient surety or amend the NOI because “[t]he Permittee claims that reclamation work was completed on part of the site.” The Division gave the operator three options—(1) providing an additional \$1300.00 in surety, (2) reclaiming the site, or (3) subject to approval of the Division, amending the mine plan and documenting that a portion of the mine has been reclaimed no later than April 1, 2011.

13. On April 21, 2011, the Division inspected the mine site. Despite the Mr. Wilhite's claims, no reclamation had been completed. The Division's inspection report noted that the operator would be obtaining additional surety. The Division notified Wilhite and Wilhite & Associates of an assessed penalty of \$2530 on March 14, 2011 for the October 2010 Cessation Order. Within that assessment notification, Mr. Wilhite and Wilhite and Associates were given a right to appeal the fine by requesting an informal review if filed within thirty days. After the thirty days, the fine would be final and payment would be required. Neither Mr. Wilhite nor his corporations attempted to appeal the assessment within the thirty days. The Division has no record of Mr. Wilhite, or his corporations, ever attempting to appeal the assessment.

14. Soon after the assessment, Mr. Wilhite began the process of trying to change the named operator for the mine site. Mr. Wilhite's new named operator, Wall & Rock, obtained another CD with Zions Bank for \$1300 on June 8, 2011. Coupled with the existing \$10,400 CD, the operators had enough surety to meet the Division's requirements. A few weeks later, the Division terminated the Cessation Order, but not the assessed fine.

15. Mr. Wilhite continued his efforts to change the named corporate operator of the mine. On July 5, 2011, Zions Bank advised the Division the bank had changed the owner of the initial CD from Wilhite & Associates, Inc. to Wall & Rock Inc.

16. Mr. Wilhite submitted an amended NOI changing the named corporate operator from Wilhite & Associates to Wall & Rock. The Division received that amendment on May 18, 2012. Mr. Wilhite's amendment included his signature from August of 2005, when he originally submitted the NOI under his personal name and Wilhite & Associates. Wall & Rock was formed

or incorporated in 2007, two years *after* Mr. Wilhite had signed the original NOI. In the end, the NOI has not properly been amended and it needs to be revisited.

17. In May 2013, after meeting with the Division and reviewing the mine's history, Mr. Wilhite refused to renew or amend the reclamation contract that he formed in 2006 under the Wilhite & Associates corporate name. Therefore, even though the named corporate operator is Wall & Rock, Mr. Wilhite was unwilling to have Wall & Rock enter a reclamation contract with the Division. Further complicating this situation, Mr. Wilhite has claimed that Wilhite & Associates no longer exists, but allows the reclamation contract stay in its name. The Division has no record of Wilhite & Associates ever being dissolved.

18. In summary, it appears that the only major outstanding matter related to the Gulch Mine is the unpaid penalty of \$2530. In addition, the current operator—Wall & Rock—has refused to sign a new reclamation contract and has failed to sign the amendment to the NOI to change the operator to Wall & Rock. As provided in the request for action, the Division asks the Board to (1) order Wilhite and his corporations to update the NOI with current information and to have the actual operating entity enter a new reclamation contract, and (2) request the Attorney General to collect the \$2530 penalty at this time.

**B. Freedom From War (S/039/0024)**

19. In late 2007, Mr. Wilhite began mining boulders in Sanpete County without submitting an NOI with the Division. The Division inspector issued a Cessation Order (MC07-01-14) for unpermitted mining on October 25, 2007. Later, the Division assessed a \$2200 penalty for the violation. The assessment noted that Mr. Wilhite was involved in other mining operations and thus knew of the Reclamation Act and the regulations requiring permits to mine.

20. Mr. Wilhite filed a Notice of Intent under his corporation, Wall & Rock. Wall & Rock paid the initial permit fee, entered into a reclamation contract, and posted an adequate surety of \$7000. The Division approved the NOI and terminated the Cessation Order in January, 2008.

21. After an appeal of the initial \$2200 assessment was submitted, the Division re-assessed the penalty and reduced it to \$550. Although the Division decreased the penalty by 75%, neither Mr. Wilhite nor Wall & Rock ever paid the fine. It is still outstanding.

22. According to the NOI, the total disturbed area would be at most five acres. The mine would lie in the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the 5cw [sic]  $\frac{1}{4}$  of Section 24 of Township 14 South, Range 2 East, Salt Lake Meridian, Utah. The surface and mineral owner is Boyd Brotherson at 480 East 400 South, Mount Pleasant, Utah 84647. The 2007 Sanpete County Tax Roll lists Avrin Brothersen as another owner of the property.

23. Since the Division approved the NOI, Mr. Wilhite and Wall & Rock have failed to limit the disturbed area to five acres. Currently, the disturbed area is approximately 20 acres—although, some of that disturbance may have been the result of the landowner. The current disturbed area lies within the East  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ ; the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ ; the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ ; and the South  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 24. Neither Mr. Wilhite nor Wall & Rock have amended the NOI to include this expanded disturbance and they have not increased the surety as required.

24. By 2009, the relationship between Mr. Wilhite and Boyd Brotherson hit rocky times. Mr. Brotherson evicted Mr. Wilhite and Wall & Rock from the land. Later in 2011, Boyd Brothersen informed the Division that his agreement with Mr. Wilhite and Wall & Rock had

dissolved and that he would no longer allow Wall & Rock to mine on his property. Also, at that time, Mr. Brotherson was performing mining operations on the land, even though only Wall & Rock was permitted to do so. The Division warned Mr. Brotherson of his violation and directed him to reclaim his disturbance or file his own NOI.

25. The Division spent significant time and energy trying to resolve the conflict and get the mine reclaimed. Mr. Brotherson proposed to file his own NOI and take over the mining operation at one point. The Division agreed to enter an extensive settlement agreement that would have resolved the conflict and facilitated a transfer and/or reclamation. Despite the Division's willingness to negotiate, Mr. Wilhite and his corporations were unwilling to accept and finalize the offers.

26. Meanwhile, neither Mr. Wilhite nor Wall & Rock have paid the \$550 penalty from 2007, nor have they paid the annual permit fees for 2008, 2009, and 2010. Also, an infestation of knapweed began to encroach on the mine site. In 2011, the Division inspector noted two plants in its report. By 2013, they were scattered throughout the site.

27. A year ago, in 2013, the Division again tried to broker a deal, this time suggesting a NOI transfer from Wall & Rock to Boyd Brotherson. As with the Division's previous attempts, this deal fell through and the transfer never took place. Consequently, the Division gave up trying work with Wall & Rock and decided to bring this matter to the Board. The Division notified Wall & Rock, its registered agent, and Mr. Wilhite of that decision on August 4, 2014. Wall & Rock's registered agent notified the Division that it had received the Division's notice on September 1, 2014.



28. In summary, the Division now seeks, in part, an order withdrawing the approval of the NOI and forfeiting the reclamation surety, and authorizing the Division to use the funds to reclaim the disturbed areas. The Division also asks the Board to ask the Attorney General to seek payment of the outstanding \$550 penalty and annual fees.

**C. Mount Pleasant Mine (S/039/0027)**

29. In early 2010, Mr. Wilhite began to mine without a permit again. The Division heard about the operation, inspected of the site, and found a seventeen-acre disturbance. It issued a Cessation Order (MC2010-41-1) for operating without a permit. The mine site lies in the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 1, Township 15 South, Range 4 West, Salt Lake Meridian, Utah. Mr. Wilhite has told the Division that Mont Larsen is the landowner.

30. The Division assessed a fine of \$4950 for the violation. At Mr. Wilhite's request, the Division held an informal assessment conference and later issued its findings and order. The order allowed for a reduction of Mr. Wilhite's penalty to \$2,200 if he completed reclamation by August 18, 2010, or in the alternative, Mr. Wilhite could use the \$4950 as part of his bond when he submitted an NOI. The order further stated that "[i]f neither option is completely satisfied by the required dates, the full fine will be reinstated." Mr. Wilhite did not complete either alternative. He performed some reclamation but did not complete the work by August 18. Therefore, the original \$ 4950 fine stands.

31. In summary, Mr. Wilhite still owes the Division \$4950 for the original assessment. In the Division's rather lenient order, it stated, "If, in the future, Mr. Wilhite is found to have started any other mining operations without a permit and surety bond, the Division will impose all

punitive measures, to the maximum extent allowed under the Act.” That order was issued on July 20, 2010.

**D. Mount Pleasant North Mine (S/039/0030)**

32. On September 23, 2010, a Division inspector discovered a mine site in which an operator had not first submitted an NOI. The Division eventually discovered who was operating the mine—Mr. Wilhite had been mining without a permit yet again.

33. The Division inspector issued the Cessation Order (MC201-17-05) and placed a copy of the order on the seat of the loader on the mine site. The Division also mailed a certified letter to Mr. Wilhite at his most recent address.

34. The location of the mine site lies within the East ½ of the Northwestern ¼ of the Southeastern ¼ of Section 26 of Township 14 South, Range 4 East, Salt Lake Meridian, Utah. The Sanpete County Tax Roll indicates that the owners are Steven and Gayle Seely. The address on the 2010 Tax Roll to reach them is 10415 East 20250 North, Mount Pleasant, Utah 84647.

35. Regarding the Cessation Order, the Division assessed a penalty of \$4400 for mining without a permit on the Mount Pleasant property. The Division identified this mine site as the “Mount Pleasant North” mine and assigned “S/039/0030” as an identifier.

36. On September 29, 2010, the Division inspector returned to the site and saw Mr. Wilhite actively mining on the site without having submitted any NOI documents. The Division issued a Failure-to-Abate Cessation Order (MC2010-61-02) for the mine. Later the Division assessed a penalty of \$22,500 for the Failure-to-Abate Order. After a request, the Division held an Informal Conference on May 23, 2011 to review the two Cessation Orders and the assessed penalties. The Division issued an order on June 28, 2011 upholding the violations and penalties.

The Division Order included language providing Mr. Wilhite or his corporations an opportunity to appeal within fifteen days of receipt of the order.

37. On July 12, 2011, before the deadline for an appeal, Mr. Wilhite requested an opportunity to enter into settlement negotiations regarding these violations and fines together with other violations at his other mining operations. Eventually, Mr. Wilhite and the Division reached a tentative agreement, which was conditioned on Mr. Wilhite's ability to reach an agreement with Boyd Brotherson, the landowner of the Freedom from War Mine. Although the agreement between Mr. Wilhite and the Division was drafted and nearly finalized, Mr. Wilhite failed to execute it.

38. On August 4, 2011, the Division sent a certified letter to Mr. Wilhite and Wall & Rock seeking to resuscitate the negotiations. It read, in part,

The Division asks you to review the offer outlined below and request a Settlement Conference to further discuss this matter by no later than September 1, 2011. If you choose to proceed with settlement by September 1, 2011, you may either: 1) pay the fines upheld in the Findings; or 2) place the amount of the fines upheld in the Findings in escrow and file an appeal of the Findings with the Board . . . . Please see R647-7-107 (outlining appeal procedures).

Failure to take any action will result in the Findings becoming final on September 1, 2011.

(Emphasis in original). Later in the letter, the Division said it would accept \$12,000 in satisfaction of the outstanding fines.

39. The letter was sent to Wall & Rock's current registered address. Kristi Redman signed for the certified letter and the Division received the Postal Service's confirmation on August 15. Neither Mr. Wilhite nor either of his corporations contacted the Division again about the settlement by or after September 1, 2011.

40. On April 20, 2013 the Division sent a Division Directive to Wall & Rock and Mr. Wilhite requiring reclamation of the lands disturbed at Mount Pleasant North Mine by May 30, 2013. At this time re-grading of the area has been completed but seeding has not been commenced and a NOV has been issued to remove an abandoned loader. The landowners have requested Mr. Wilhite seed the land. The Division has asked Mr. Wilhite will pay for the seeds.

41. In summary, the Mr. Wilhite and/or Wall & Rock are under two Cessation Orders, the outstanding balance of the two assessed penalties is \$26,900, and Mr. Wilhite failed to appeal the Division's order upholding the Cessation Orders and penalties. Additionally, neither Mr. Wilhite nor either of his corporations have applied for an NOI, and nobody has reclaimed the site.

#### **Request for Action**

The Division asks the Board to take the following actions:

##### **A. Gulch Mine (S/023/0087)**

1. Order Mr. Wilhite, Wilhite & Associates, and Wall & Rock to update the NOI with current information and to have the actual operating entity enter a new reclamation contract;
2. request that the Division and the Attorney General, under subsections 40-8-9.1(4), (6) of the Utah Code, take all necessary actions—including filing a civil action—to collect all outstanding annual permit fees and all penalties assessed against Wall & Rock, Inc., Wilhite & Associates, Inc., and/or Mr. Wilhite; and
3. grant any other just and equitable relief in these circumstances.

**B. Freedom From War Mine (S/039/0024)**

1. Withdraw approval of the Notice of Intention under subsection 40-8-16(2) of the Utah Code;
2. forfeit, under subsection 40-8-14(6) of the Utah Code, Certificate of Deposit number 7089407881 held by Zions Bank, which is for the benefit of the Division, and order Zions Bank to deliver the principle of \$7000 together with any accrued interest to the Division to pay for the costs associated with reclaiming the Freedom from War Mine site;
3. authorize the Division to reclaim the lands affected by the Freedom from War Mine site under Utah Administrative Code Rule R647-3-112(1);
4. request that the Division and the Attorney General, under subsections 40-8-9.1(4), (6) of the Utah Code, take all necessary actions—including filing a civil action—to collect all outstanding annual fees, those reclamation costs greater than CD no. 0329574941 might cover, and all penalties assessed against Wall & Rock, Inc. and/or M. Todd Wilhite; and
5. grant any other just and equitable relief in these circumstances.

**C. Mount Pleasant - Wilhite Mine (S/039/0027)**

1. Request that the Division and the Attorney General, under subsections 40-8-9.1(4), (6) of the Utah Code, take all necessary actions—including filing a civil action—to collect all outstanding annual permit fees and all penalties assessed against Wall & Rock and/or Mr. Wilhite;
2. order, under Utah Code subsection 40-8-6(4), Mr. Wilhite and Wall & Rock, jointly and severally, to reclaim the mine site to the Division's specifications, and if the order is not complied with by April 1, 2015, order the Division and the Attorney General to take

all necessary actions—including filing a civil action—against Mr. Wilhite and Wall & Rock to collect the estimated costs of reclaiming the mine site; and

3. grant any other just and equitable relief in these circumstances.

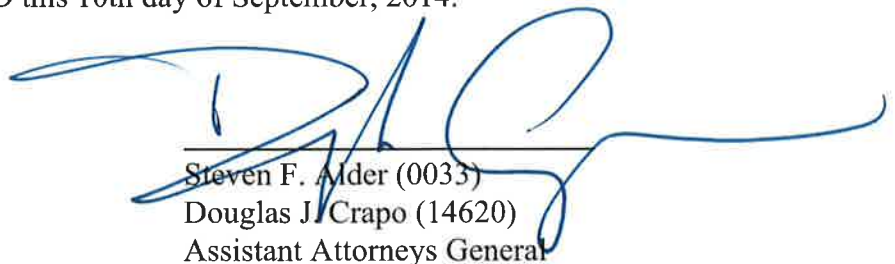
**D. Mount Pleasant North Mine (S/039/0030)**

1. Request that the Division and the Attorney General, under subsections 40-8-9.1(4), (6) of the Utah Code, take all necessary actions—including filing a civil action—to collect all outstanding annual permit fees and all penalties assessed against Wall & Rock and/or Mr. Wilhite;

2. order, under Utah Code subsection 40-8-6(4), Mr. Wilhite and Wall & Rock, joint and severally, to reclaim the mine site to the Division's specifications, and if the order is not complied with by April 1, 2015, order the Division and the Attorney General to take all necessary actions—including filing a civil action—against Mr. Wilhite and Wall & Rock to collect the estimated costs of reclaiming the mine site; and

3. grant any other just and equitable relief in these circumstances.

RESPECTFULLY SUBMITTED this 10th day of September, 2014.

A large, stylized handwritten signature in blue ink, likely belonging to Steven F. Alder, is written over the typed names and titles of the attorneys.

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## CERTIFICATE OF MAILING

I certify that I caused a true and correct copy of the above Notice of Agency Action to be delivered the 11<sup>th</sup> day of September, 2014, to:

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